

Decision **PROPOSED DECISION OF ALJ CHIV** (Mailed 4/12/2019)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CereTel Incorporated
for Registration as an Interexchange
Carrier Telephone Corporation
Pursuant to the Provisions of Public
Utilities Code Section 1013.

Application 16-04-006

**DECISION DENYING CERETEL INCORPORATED A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND
ORDERING FINE OF \$188,000**

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**DECISION DENYING CERETEL INCORPORATED A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY AND
ORDERING FINE OF \$188,000**

Summary

This decision denies CereTel Incorporated's (CereTel or Applicant) application for a Certificate of Public Convenience and Necessity to provide interexchange carrier telephone service in California under Public Utilities Code § 1001. The California Public Utilities Commission (Commission) finds that CereTel has not demonstrated that it is fit to operate and provide its proposed services in California due to the Applicant operating without authority, failing to truthfully respond to parts of the application, and being non-responsive to the Commission's requests for additional information.

The Commission considered the application, briefs, and protests filed in this proceeding, as well as CereTel's actions during the proceeding, and finds that the minimum fine prescribed in Public Utilities Code section 2107 of \$500 per day of operating without authority shall be applied. The Commission determines that for the purposes of assessing a fine, the number of days of unauthorized operation shall begin on the date it began operations in California without authority (March 28, 2015) and conclude on the date it filed its application for operating authority (April 8, 2016). As a result, this decision imposes a fine of \$188,000 against CereTel for 376 days of operation without authority.

This proceeding is closed.

1. Background

On April 8, 2016, CereTel Inc. (CereTel or Applicant) filed Application (A.) 16-04-006 seeking a registration license to operate as a Non-Dominant Interexchange Carrier Telephone Corporation (NDIEC) pursuant to Public Utilities (Pub. Util.) Code § 1013.¹ The application was filed pursuant to the registration process for NDIECs adopted in Decision (D.) 97-06-107.

On May 12, 2016, the Commission's Safety and Enforcement Division (currently known as CPED)² timely filed a protest to the application. CPED's protest questions CereTel's fitness to operate in California and specifically alleges that: (1) CereTel appears to have operated in California before receiving Commission approval in violation of Pub. Util. Code §§ 885 and 1013; (2) CereTel acquired the assets of Angel Americas, LLC (Angel Americas) without Commission approval for a transfer of assets in violation of Pub. Util. Code §§ 851 and 854(a); (3) CereTel did not provide the fictitious business names under which it conducts business in violation of Rule 1.1 of the Commission's Rules of Practice and Procedure (Rules); and (4) CereTel failed to disclose officers or directors as required in the application in violation of Rule 1.1. CPED recommends that the Commission impose penalties for these violations pursuant to Pub. Util. Code § 405.³

On May 25, 2016, CereTel filed a reply to CPED's protest denying each of the allegations. CereTel's denials are generally summarized as follows:

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

² The Commission's Safety and Enforcement Division is also known as the Consumer Protection and Enforcement Division (CPED). Because the pleadings in this case were primarily filed under the name CPED, we will refer to this party as CPED in this decision.

³ See, generally, CPED's Protest to the Application of CereTel (CPED's Protest).

- (1) CereTel resells international calling cards that explicitly state that the cards should not be used for intrastate calls and that only a “very small number” of intrastate calls were/are made. Consequently, the Commission does not have jurisdiction over CereTel’s services.
- (2) CereTel was not required to seek approval for its acquisition of Angel Americas because Angel Americas is not a public utility. Even if Angel Americas is deemed a public utility, the obligation to seek approval for the acquisition falls on the seller of assets, not the buyer.
- (3) The names that CereTel failed to disclose are not fictitious business names but merely “trade names.”
- (4) The officer and director CereTel failed to disclose was employed by Angel Americas, which is not an affiliate of CereTel. Even if CereTel was obligated to disclose the individual, the individual was a manager, not an officer or director.
- (5) CereTel failed to remit user fees and reports to the Commission because it was unaware that its calling card product was being used to make intrastate calls.⁴

CereTel therefore argues that no penalties or enforcement actions are warranted.

On November 2, 2016, the assigned Administrative Law Judge (ALJ) issued a ruling setting a prehearing conference (PHC) and invited PHC statements from the parties. CereTel filed a PHC statement on November 30, 2016. A PHC was held on December 5, 2016 to determine the issues within the scope of the proceeding and other procedural matters. The Scoping Memo and Ruling was issued on December 28, 2016. An evidentiary hearing was held on June 15, 2017. On July 17, 2017,

⁴ See, generally, CereTel’s Reply to CPED’s Protest.

CereTel and CPED filed opening briefs. On July 31, 2017, reply briefs were filed by CereTel and CPED.

On January 25, 2018, the proceeding was reassigned from ALJ Sophia Park to ALJ Troy Taira. On June 6, 2018, the proceeding was reassigned again from ALJ Troy Taira to ALJ Debbie Chiv. On July 12, 2018, the assigned ALJ issued a ruling requesting additional information from CereTel in order to process its application. CereTel did not respond to the ruling. On August 7, 2018, the ALJ issued a second request for information from CereTel. Again, CereTel failed to provide a response to the request. This proceeding was submitted on August 20, 2018.

2. Jurisdiction

As a preliminary issue, CereTel challenges the Commission's jurisdiction over its telecommunications services. CereTel argues that the level of intrastate service provided through its prepaid calling card products is merely "incidental" and therefore, the Commission does not have jurisdiction over its services.⁵ CereTel acknowledges that it resells prepaid calling cards but states that its services are exempt from Commission jurisdiction because the calling cards are used for international or interstate calls.⁶ CereTel further argues that its calling cards state they should not be used for intrastate calls and that only "a very small number of intrastate calls in California" are made.⁷

We find that the Applicant confuses the basis for the Commission's jurisdiction. The Commission's jurisdiction in this case stems from the Applicant offering prepaid calling cards in California, not from the level of intrastate calls

⁵ CereTel's Opening Brief at 6.

⁶ *Id.* at 7.

⁷ CereTel's Reply to CPED's Protest at 1.

made through the Applicant's products. The Commission is authorized to regulate both prepaid calling cards and prepaid calling services under California Business & Professions (Bus. & Prof.) Code § 17538.9 and Pub. Util. Code §§ 885-887. As defined in § 17538.9, there is no minimum threshold on the usage of a "prepaid calling card" or the extent of "prepaid calling services;" thus, the level of intrastate calls made is of no significance.⁸

As acknowledged by CereTel, CereTel offers prepaid calling cards and prepaid calling services in California that allow consumers to originate calls via an online pinless product.⁹ Accordingly, the Commission has jurisdiction over CereTel's services.

3. Discussion

The Commission considers several questions to determine whether to grant CereTel the requested operating authority and/or whether CereTel has committed certain violations as alleged by CPED.

Note that while CereTel's application was initially filed pursuant to Pub. Util. Code § 1013, an expedited and ministerial registration process, CPED's protest to the application removed it from the registration process and set it for consideration as a Certificate of Public Convenience and Necessity (CPCN) under Pub. Util. Code § 1001, pursuant to D.10-09-017.

3.1. Operating Without Commission Authority

The first issue is whether CereTel is or was operating its telecommunications services in California without Commission approval.

⁸ Under § 17538.9, "prepaid calling card" is defined as any object containing an access number and authorization code that enables a consumer to use prepaid calling services. "Prepaid calling services" are defined as any prepaid telecommunications service that allows consumers to originate calls through an access number and authorization code, whether manually or electronically dialed.

⁹ CereTel's Reply to CPED Protest at 1.

Telecommunications service providers who seek to provide non-dominant interexchange services in California are required to obtain a CPCN from the Commission pursuant to § 1001. Service providers who seek to offer prepaid calling cards and/or prepaid calling services are also required to register with the Commission under § 1013.

CPED alleges that CereTel was operating in California without authority in violation of §§ 885-887 and § 1013. CPED contends that based on CereTel's own admission, in response to a CPED data request, it began providing prepaid calling card services in California on March 28, 2015, over one year prior to filing the current application.¹⁰

Section 885 provides, in pertinent part, that "[a]ny entity offering the services of telephone prepaid debit cards is subject to the registration requirements of Section 1013..." Section 886 states, in pertinent part, that "[e]ntities that are required to register, but have failed to do so ... shall not offer the services of telephone prepaid debit cards." Those entities who failed to register "shall be subject to fines or other sanctions that may be ordered by the commission." Section 887 provides that the Commission may enforce the requirements of Bus. & Prof. Code § 17538.9.

CereTel disagrees with CPED, generally arguing that: (1) it provides a small number of interstate calls; and (2) Pub. Util. Code §§ 202, 885-886, 1001, and 1013 expressly prevent the Commission from exercising authority over interstate or international telecommunications.¹¹ CereTel cites the decision in *In the Matter of the Application of Skynet Communications, Inc. (Skynet)*, D.09-01-017,

¹⁰ CPED's Protest at 3.

¹¹ See CereTel's Opening Brief at 5-9.

positing that the decision similarly does not permit Commission jurisdiction over interstate and international services.¹²

3.1.1. Discussion

As further discussed in Section 2, above, CereTel provides prepaid calling cards and prepaid calling services that permit its customers to make intrastate calls, bringing CereTel's services under the Commission's jurisdiction.

Previous Commission decisions affirm that providers of calling card services must register with the Commission, no matter what level of intrastate, interstate, and international calls are made using the calling cards. For example, in *In the Matter of Application of NobelTel, LLC (NobelTel) for Registration as an Interexchange Carrier Telephone Corporation*, D.16-04-018, the Commission denied NobelTel a CPCN and imposed a fine of \$146,500 for operating without authority. The Commission stated that "[t]here is no exception to the registration requirement simply because NobelTel is a provider of international phone cards and its California intrastate traffic is de minimus."¹³

Based on the prepaid calling cards and prepaid calling services offered by CereTel, we conclude that it is subject to the registration requirements of § 1013. CereTel states it began offering prepaid calling cards in California on

¹² *Id.* at 10.

¹³ D.16-04-018 at 11. Similarly, in *In the Matter of the Application of Ilatanet, LLC (Ilatanet)*, the applicant argued that because it offered a small amount of intrastate services and because it considered these services to be interstate (or international), its services were not under the Commission's jurisdiction. The Commission disagreed finding that "[a] service provider who does, or can, offer intrastate calling services, regardless of the amount of intrastate traffic or revenue generated, is required to obtain operating authority from the Commission." D.16-12-002 at 11. The Commission denied Ilatanet a CPCN, imposed a fine, and required it to cease operations in California.

March 28, 2015.¹⁴ Therefore, CereTel began providing prepaid calling cards and prepaid calling card services without Commission authority since that date. Accordingly, the Commission finds that CereTel operated without authority in violation of §§ 885-887 and § 1001 beginning on March 28, 2015.

3.2. Disclosure of Fictitious Business Names

The next issue is whether CereTel failed to truthfully disclose its fictitious business names (FBN) on its application. On the application for a registration license, Question 1.A requires the Applicant to provide “all fictitious business names under which applicant has done business in the last five years.” CereTel did not provide any FBNs in response to this question.

CPED contends that CereTel failed to disclose FBNs on its application, particularly the identity of STi, and is therefore in violation of Rule 1.1. Rule 1.1 states that any person who signs a pleading, enters an appearance, offers testimony or otherwise transacts business with the Commission agrees, among other things, “never to mislead the Commission or its staff by an artifice or false statement of fact or law.”

CereTel acknowledges that, in response to a CPED data request, it identified “four trade names” but does not consider them to be FBNs. Those names are STi Prepaid, LLC (STi), CVT Prepaid Solutions, Inc., Wise, and Kare Distribution. CereTel claims that these are trade names that are simply used as a brand. CereTel argues that if CPED’s position was applied elsewhere, it would be akin to considering the brand names of vehicles sold by Ford Motor Company (Mustang, Thunderbird) to be fictitious business names of Ford.¹⁵

¹⁴ CereTel’s Reply to CPED’s Protest at 3.

¹⁵ CereTel’s Opening Brief at 19.

According to Bus. & Prof. Code § 17900(b), a FBN or Doing Business As (DBA) is defined as a name “other than the corporate name stated in its articles of incorporation filed with the California Secretary of State...” Applying this definition to Question 1.A of the registration application, a FBN appears to broadly be any name under which the applicant has done business in the last five years. Although CereTel makes a distinction for “trade names” as being excluded, CereTel provides no evidence supporting its view that trade names are exempt from the FBN definition. Rather, if the Applicant has done business under that name in the last five years, the name should be disclosed on the application as an FBN.

Here, CereTel appears to have been doing business under the name STi. The website used by CereTel to market its prepaid calling cards is titled <http://stiprepaid.com/>. All references to the product on the website are to STi, with the exception of the fine print at the bottom of the page in the “About Us” section that references CereTel, Inc. In particular, STi is the name specifically referenced in: (a) the description of the history of the company, (b) the services provided, (c) the label on the prepaid calling cards, and (d) the website’s terms and conditions.¹⁶

Given CereTel’s extensive use of the STi name in the provision and marketing of its prepaid calling card services, the Commission finds that the name STi is a fictitious business name under which CereTel has done business in the last five years and the name should have been disclosed in response to Question 1.A. Accordingly, the Commission finds that CereTel’s failure to adequately respond to Question 1.A is a violation of Rule 1.1.

¹⁶ See <http://stiprepaid.com/>.

3.3. Disclosure of Officers and Directors

We next consider whether CereTel failed to properly disclose relevant officers and directors on its application. As part of the registration application, an applicant must make a reasonable showing of managerial qualifications and technical competence to provide local exchange telecommunications services.

Question 8 of the application requests affirmation that no one associated with or employed by the Applicant as an affiliate, officer, director, partner, agent, or owner of more than 10 percent of the Applicant has done any of the following:

- (a) held one of these positions with a company that filed for bankruptcy;
- (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others;
- (c) been convicted of a felony;
- (d) been the subject of a criminal referral by judge or public agency;
- (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction;
- (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of §§ 17000, *et seq.*, §§ 17200, *et seq.*, or §§ 17500, *et seq.*, of the Cal. Bus. & Prof. Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others;
- (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; and
- (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of

monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.¹⁷

In its application, CereTel answered in the affirmative to Question 8, except for in one instance. CereTel stated that two owners of CereTel, Thomas Lynch and Bernt Killingstad, were also owners of Skynet Cloud Solutions Inc. (Skynet). Skynet filed for bankruptcy in February 2016.¹⁸

Similarly, Question 9 requests affirmation that the Applicant, or any affiliate, officer, director, partner, or owner of more than 10 percent of the Applicant, is not being or has not been “investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.” In its application, CereTel answered in the affirmative to this question.

CPED argues that CereTel did not truthfully respond to Questions 8 and 9 because it failed to disclose that CereTel’s Chief Operating Officer (COO) and Director previously held a management position at Angel Americas, which declared bankruptcy, was investigated by the Commission’s Safety and Enforcement Division, and was denied a registration license by the Commission.¹⁹

CereTel refutes these allegations stating that Angel Americas is not an affiliate of CereTel, that Angel Americas did not declare bankruptcy, that an Order Instituting Rulemaking is not an “investigation” as contemplated under

¹⁷ These certifications are required by D.13-05-035, Ordering Paragraph 14.

¹⁸ Application at Appendix 3.

¹⁹ See, generally, CPED’s Opening and Reply Brief.

Question 9 of the application, and that CereTel's COO who held a position for Angel Americas is no longer employed at CereTel and was a manager.²⁰

3.3.1. Discussion

We first address CereTel's response to Question 8. The issue appears to turn on whether or not Angel Americas declared bankruptcy. If Angel Americas did not declare bankruptcy, CereTel's failure to disclose its COO is of no significance. CPED's primary basis for stating that Angel Americas filed for bankruptcy is a statement made by CereTel that it "purchased Angel Americas' assets at a bankruptcy sale..."²¹ Mr. Lynch, CereTel's co-owner, later testified that the assets were actually acquired at a "foreclosure sale" and clarified that the previous bankruptcy sale statement was made in error.²² CPED does not offer any other evidence that Angel Americas declared bankruptcy, despite that such filing should be a matter of public record. Thus, the Commission finds insufficient evidence to conclude that Angel Americas declared bankruptcy.

CPED also asserts that the COO should have been disclosed in response to Question 8 because Angel Americas was denied a registration license by the Commission. However, Question 8(e) of the application requests whether the person/entity at issue had its "operating authority denied." Here, there is no evidence that the COO and/or CereTel had its operating authority denied. Therefore, the Commission finds that CereTel truthfully responded to Question 8 as required.

We next address CereTel's response to Question 9. The issue turns on whether Angel Americas was ever "investigated by...any law enforcement or

²⁰ See, generally, CereTel's Opening and Reply Brief.

²¹ CereTel's Reply to CPED's Protest at 7.

²² Exhibit CereTel-1 at 6.

regulatory agency for failure to comply with any law, rule or order.” CPED contends that Angel Americas was investigated by CPED when it was ultimately denied a Registration License in D.16-07-005. Therefore, CPED argues that CereTel should have disclosed the identity of CereTel’s COO, who was formerly in a management position at Angel Americas. CereTel counters that CPED’s investigation as part of Angel Americas’ registration application was not the type of formal investigation contemplated by Question 9.

Question 9 asks whether the Applicant or any affiliate was or is being investigated by certain regulatory entities. We do not find supporting evidence that Angel Americas was or is an affiliate or partner of CereTel. We also do not find supporting evidence that any officer, director, or owner of CereTel was or is being investigated by regulatory entities. CPED has not alleged that CereTel’s COO was investigated by any regulatory authority as an individual. Therefore, any investigation of Angel Americas is not implicated in this question and we need not address whether such an investigation into Angel Americas occurred.

Accordingly, the Commission finds that CereTel responded truthfully to Questions 8 and 9 of the registration application.

3.4. Payment of Commission User Fees

Under Pub. Util. Code §§ 401 – 435, a telephone corporation must report certain financial information and remit the appropriate amount of the Commission’s Utilities Reimbursement Account Fees, based on the company’s revenue in California.

As a result of CereTel’s failure to obtain a registration license from the Commission, CPED argues that CereTel had been operating in California without paying the associated user fees since at least March 28, 2015. Under

§ 406, failure to pay the appropriate fees is punishable by a fine and revocation of operating authority. CereTel argues that it was unaware of this requirement, given the small amount of intrastate calls made, but stated that it would remit the appropriate user fee amount.²³

The Commission finds that lack of knowledge about a law or regulation is not a defense for failure to comply with a regulation or law. By its own admission, CereTel states that it has failed to pay the appropriate user fee amounts. Accordingly, the Commission finds that CereTel is in violation of Pub. Util. Code § 401-435.

3.5. Acquisition of a Public Utility without Commission Authority

The remaining issue is whether CereTel's acquisition of Angel Americas required Commission approval pursuant to Pub. Util. Code §§ 851 and 854.

We first consider the history of CereTel's acquisition and the history of Angel Americas. Prior to the filing of this application, CereTel acquired the assets and intellectual property of Angel Americas, LLC.²⁴ The date of acquisition is on or about March 2015.²⁵ Prior to CereTel's acquisition of Angel Americas, in November 2013, Angel Americas requested registration from the Commission as an interexchange carrier and was denied such authority.²⁶ In the decision denying Angel Americas' registration, the Commission noted that

²³ CereTel's Reply to CPED's Protest at 9.

²⁴ *Id.* at 5.

²⁵ See CPED's Protest at 5. The Federal Communication Commission (FCC) database corroborates the acquisition date, as Angel Americas is no longer active with the FCC as of March 28, 2015. See FCC Form 499 Filer Database, at <http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=830017>.

²⁶ D.16-07-005, *Application of Angel Americas, LLC for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013*.

Angel Americas acquired the assets of STi without Commission authorization.²⁷ STi was previously issued a CPCN by the Commission but the CPCN was retired after STi's parent company filed for bankruptcy and ceased operations.²⁸

CPED argues that in March 2015, CereTel purchased the assets of Angel Americas without Commission approval in violation of §§ 851 and 854(a).²⁹ Section 851 states that a public utility shall not sell or otherwise encumber any part of its property necessary or useful to performing its duties to the public with any other public utility without Commission approval. Section 854 states that "[n]o person or corporation...shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission."

CereTel counters that approval of its acquisition of the assets of Angel Americas was not required because: (1) Angel Americas was not a certified public utility, and even if it was, the obligation to seek approval holds with the seller, not the acquirer; (2) CereTel did not seek to acquire "control" of Angel Americas; (3) CereTel did not sell any property to Angel Americas in violation of § 851 and the obligation to seek approval holds with the seller, not the acquirer, and (4) CereTel's acquisition of STi was for its "trade name" and not for an asset subject to § 851 or 854.³⁰

²⁷ See D.16-07-005 at 2. The application was ultimately dismissed in large part because Angel Americas failed to respond to CPED's protest, as required, in that proceeding. See also FCC Public Notice DA 14-936, dated June 27, 2014, announcing the transfer of control of STi Prepaid, LLC to Angel Americas, LLC, at https://docs.fcc.gov/public/attachments/DA-14-936A1_Rcd.pdf.

²⁸ D.16-07-005 at 2.

²⁹ CPED's Opening Brief at 19.

³⁰ CereTel's Opening Brief at 19-22.

3.5.1. Discussion

CereTel first argues that Angel Americas was not a public utility and therefore CereTel is not bound to §§ 851 or 854. Pub. Util. Code § 216(a) states that a “public utility” includes a “telephone corporation.” A telephone corporation is further defined in § 234(a) as “every corporation or person, owning, controlling, operating, or managing any telephone line for compensation within the state.”

In its November 2013 application for registration to the Commission, A.13-11-014, Angel Americas attested that it was a telephone corporation in California. Angel Americas also stated that it offered prepaid calling cards and services in California and was thus subject to the registration requirements of § 1013, which governs registration requirements for telephone corporations.³¹ It appears that Angel Americas may have been a public utility for purposes of § 851 and 854.

Likewise, as a reseller of prepaid calling cards and services in California, CereTel is a telephone corporation “owning, controlling, operating, or managing any telephone line for compensation within the state.”³² As a telephone corporation, CereTel is a public utility pursuant to § 216(a).

The next issue is whether CereTel as a public utility was required to seek Commission approval for acquiring assets of Angel Americas, another public utility. Pub. Util. Code § 854 requires a person who acquires or controls a public utility, either directly or indirectly, to seek authorization from the Commission.

³¹ A.13-11-014.

³² Pub. Util. Code § 234(a).

CereTel argues that it is not in violation of § 854 in part because it did not acquire “control” of Angel Americas.³³

CereTel first contends that it did not acquire control of Angel Americas because it “only purchased assets (not stock).”³⁴ But CereTel provides no support for why control of a public utility requires a stock purchase. CereTel later argues that it did not acquire control of Angel Americas because “whoever controlled Angel Americas immediately before CereTel purchased its assets controlled Angel Americas immediately afterwards.”³⁵ According to the FCC, Angel Americas ceased its active status following CereTel’s March 2015 acquisition. CereTel provides no evidence that Angel Americas exists as an independent entity following the acquisition and it is unclear who CereTel is referring to that controls Angel Americas post-acquisition.

We also consider CereTel’s argument that the obligation to seek approval from the Commission for a sale of assets lies with the seller, and not the buyer. Section 854(e) states that the “person or corporation seeking acquisition or control of a public utility organized and doing business in this state shall have, before the commission, the burden of providing by a preponderance of the evidence that the requirements for subdivisions (b) and (c) are met.” As the acquiring party bears the burden of showing the Commission it has met other requirements of § 854, it appears that CereTel, in seeking to acquire the assets of Angel Americas, may bear responsibility for seeking Commission approval under § 854.

³³ CereTel’s Opening Brief at 19; CereTel’s Reply Brief at 19-20.

³⁴ CereTel’s Reply to CPED’s Protest at 6.

³⁵ CereTel’s Opening Brief at 20.

Based on the record in this proceeding, it is unclear whether CereTel acquired the requisite control over Angel Americas to necessitate approval for the transaction, pursuant to § 854. However, the Commission determines it is not necessary to reach a conclusion on this issue based on CereTel's other violations, as discussed above, and therefore, we do not reach a conclusion on this issue.

We also consider whether CereTel's acquisition also violated § 851. It appears that Angel Americas may have sold or encumbered "part of its property" necessary or useful in performing its duties to the public. At a minimum, the assets acquired by CereTel included certain assets and/or intellectual property of STi. STi was previously issued a CPCN by the Commission for its telecommunications services.³⁶ As detailed further in Section 3.2 above, based on the breadth of CereTel's use of STi's products and services, it appears that part of the assets sold by Angel Americas to CereTel are "necessary or useful" in performing the duties as a telephone corporation and public utility. As further detailed in Section 3.2, we are not persuaded by CereTel's argument that STi is merely a trade name, and not an asset.

Additionally, we address CereTel's argument that the obligation to seek approval from the Commission for a sale of assets lies with the seller and not the buyer. Section 851 does not contain a similar provision as § 854(e) and it is unclear whether failure of the seller to obtain Commission approval for a transaction under § 851 puts the transaction itself in violation of § 851. However, as with Section 854, the Commission need not reach a conclusion on whether CereTel was required to seek approval for its transaction with Angel Americas based on CereTel's other violations, and we therefore do not reach a conclusion on this issue.

³⁶ D.16-07-005 at 2.

3.6. Certificate of Public Convenience and Necessity

The Commission next addresses whether it should grant CereTel a CPCN.

As discussed above, the Commission finds CereTel in violation of the following: (1) offering prepaid calling cards and services in California without Commission authority in violation of §§ 885-887 and § 1001; (2) failing to comply with the disclosure of fictitious business names as required in the application in violation of Rule 1.1, and (3) failing to pay the appropriate user fees in violation of § 401-435. In addition, and most recently, CereTel failed to respond to the ALJ's multiple requests for additional information in order to process this application.

The Commission has previously denied applications for a CPCN after finding a telecommunications service provider unfit to operate and liable for financial penalties for operating without authority under circumstances similar to those in this proceeding.³⁷

Based on the multitude of violations committed and CereTel's failure to respond to the ALJ's recent requests of additional information, we conclude that CereTel is unfit to operate in California as a telecommunication service provider. Accordingly, we deny CereTel's request for a CPCN for operating authority in California.

4. Penalties and Fines

Lastly, the Commission considers whether fines or penalties should be imposed upon CereTel for the above-discussed violations. Pub. Util. Code §§ 2107-2108 and D.98-12-075 provide guidance on the imposition of fines against a public utility.

³⁷ See, e.g., D.16-04-018, D.16-12-002.

Section 2107 provides that “[a]ny public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than one hundred thousand dollars (\$100,000), for each offense.” Section 2108 provides that “[e]very violation...by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day’s continuance thereof shall be a separate and distinct offense.”

In D.98-12-075, the Commission established several factors to be considered in setting fines: (1) severity of the offense; (2) conduct of the utility; (3) financial resources of the utility; and (4) role of precedent.³⁸ We address each of these factors in turn.

4.1. Severity of the Offense

In D.98-12-075, the Commission stated that the size of a fine should be proportionate to the severity of the offense. To determine the severity of the offense, the Commission considered that “[e]conomic harm reflects the amount of expense which was imposed upon the victims of the violation, as well as any unlawful benefits gained by the public utility.”³⁹ We also found that harm to the regulatory process, in the form of failure to comply with the Commission’s rules and regulations “regardless of the effects on the public, will be accorded a high

³⁸ Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates Adopted by the Commission in D.97-12-088, 1998 Cal. PUC LEXIS 1016 at 71-73.

³⁹ *Id.*

level of severity.”⁴⁰ The Commission also considers the number of violations as a factor in determining severity, in which “temporally distinct violations can suggest an ongoing compliance deficiency which the public utility should have addressed after the first instance.”⁴¹

Here, the Applicant does not appear to have caused physical or economic harm through its violations. However, the Applicant has engaged in several violations of reporting and compliance requirements. These violations are also temporally distinct in that they occurred over several years, beginning in at least March 2015 (operating services in California without Commission authority), in April 2016 (at the time of the filing of the application) and most recently, in August 2018 (with the failure to respond to the Commission’s requests for additional information).

Based on our general policy that harm to the regulatory process should be accorded a high level of severity, and the multiple temporally-distinct violations committed, we conclude that this factor weighs in favor of a higher fine or penalty for the Applicant.

4.2. Conduct of the Utility

In D.98-12-075, the Commission stated that the size of the fine should reflect the conduct of the utility. When assessing the conduct of the utility, the Commission stated it should consider the following factors:⁴²

- (1) The utility’s actions to prevent the violation: Utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. A utility’s past

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 73-74.

record of compliance may be considered in assessing any penalty.

- (2) The utility's actions to detect the violation: Utilities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent, wrongdoing will be considered an aggravating factor. The level and extent of management's involvement or tolerance of the offense will be considered in assessing any penalty.
- (3) The utility's actions to disclose and rectify the violation: Utilities are expected to promptly bring a violation to the Commission's attention. Steps taken to promptly and cooperatively report, and correct violations may be considered in assessing any penalty.

Based on the number of violations committed, CereTel does not appear to have taken reasonable steps to ensure compliance with Commission rules and regulations, or to detect violations. Moreover, CereTel acknowledges that one of its owners/officers, Thomas Lynch, represented Angel Americas in their registration application back in November 2013, in which the Commission denied the application.⁴³ Mr. Lynch also represented other companies in applications for registration during this period.⁴⁴ The fact that one of CereTel's owners and officers has previously represented other clients in registration applications before the Commission, under similar circumstances, is noteworthy and strongly indicates that CereTel knew or should have known that it required operating authority before providing prepaid calling card services in California. And we find that CereTel knew or should have known that it must respond to requests for information from the Commission.

⁴³ CereTel's Reply Brief at 9.

⁴⁴ *Id.*

The Commission concludes that the Applicant failed to reasonably prevent these violations, detect these violations, or disclose these violations to the Commission. This factor weighs in favor of a higher penalty or fine for the Applicant.

4.3. Financial Resources of the Utility

The Commission next considers “the financial resources of the public utility in setting a fine which balances the need for deterrence with the constitutional limitations on excessive fines.”⁴⁵ The Commission recognizes the range of utility sizes and operations as a factor in setting fines in order to seek deterrence, without being excessive, based on a utility's financial resources.

According to its website, CereTel operates around the U.S., as well as globally.⁴⁶ Therefore, CereTel’s precise financial condition and resources is difficult to ascertain for the purposes of this factor. We find it reasonable to consider a monetary fine that is in line with the financial statement provided in CereTel’s application, as well as fines imposed against other similar applicants, as further discussed below.

4.4. Role of Precedent

Lastly, the Commission should consider previous cases that involved the imposition of sanctions and “involve the most reasonably comparable factual circumstances and explain any substantial differences in outcome.”⁴⁷ In D.16-05-001, which imposed a fine against a telecommunications company for operating without a CPCN, we stated that “[w]hile the imposition of fines and penalties under §§ 2107 and 2108 is the Commission’s standard practice, we have not always required a mechanical interpretation of their provisions, but rather

⁴⁵ D.98-12-075 at 75-76.

⁴⁶ <http://stiprepaid.com/>.

⁴⁷ D.98-12-075 at 75-76.

have looked to ensure that a penalty is sufficient to deter future violations and is reasonable under the circumstances.”

We consider several factually-similar instances when the Commission imposed a fine, as follows:

- In D.04-01-039, a fine of \$500 was imposed against a telecommunications company that provided service without a CPCN for less than a year. The Commission found the penalty “sufficient to deter Applicant and others from future violations.”⁴⁸
- In D.04-05-049, the Commission accepted “a voluntary contribution to the State of California General Fund of \$11,000 in lieu of a fine” for selling prepaid phone cards without a CPCN for five and a half years, after finding that the applicant had access to substantially greater resources than the utility addressed.⁴⁹
- In D.09-05-032, the Commission adopted a settlement agreement imposing a fine of \$500 for operating without a CPCN for approximately three months.⁵⁰
- In D.16-04-018, the Commission denied an applicant a CPCN and imposed a fine of \$146,500 for operating without authority for 293 days.⁵¹
- In D.16-12-002, the Commission denied the applicant a CPCN and imposed a fine of \$228,000 for operating without authority for 456 days.⁵²

⁴⁸ *In the Matter of the Application of Telecom Consultants, Inc. for a Certificate of Public Convenience as a Non-Dominant Competitive Local Service and Interexchange Service Provider*, D.04-01-039 at 6.

⁴⁹ *In the Matter of the Application of Evercom Systems, Inc. for a Certificate of Public Convenience and Necessity to Provide Switchless Resale of Interexchange Telecommunication Services*, D.04-05-049 at 8.

⁵⁰ *In the Matter of the Application of 88 Telecom Corporation, for Registration as an Interexchange Carrier Telephone Corporation*, D.09-05-032.

⁵¹ *NobelTel*, D.16-04-018 at 18.

⁵² *Ilatanet*, D.16-12-002 at 18.

In determining an appropriate fine, the Commission reviews all facts in a proceeding, including those that mitigate wrongdoing and those that exacerbate it.⁵³ In all cases, the Commission finds that “harm will be evaluated from the perspective of the public interest.”

The Commission considers the above-described violations to be serious violations. However, we do note that Applicant ultimately filed an application for operating authority with the Commission.

Based on precedent of proceedings with similar facts as the present application, we conclude that a fine should be imposed on CereTel for its various violations and that the fine should be based on the minimum fine allowable under § 2107 of \$500 per day. Regarding the appropriate number of days for calculation of CereTel’s fine, the Commission applies the date on which CereTel offered services in California without authority, March 28, 2015, as the starting date and the date of the filing of this application, April 8, 2016, as the ending date. This amounts to a period of 376 days of operation without authority. Accordingly, CereTel is directed to pay a fine of \$188,000.⁵⁴

5. Conclusion

We conclude that the Applicant has committed multiple violations of the Commission’s rules and regulations beginning as early as March 2015 and ending as recently as August 2018. Those violations include failure to obtain Commission authority for an extensive period prior to offering telecommunications services in California, failure to disclose fictitious business names on its registration application, failure to pay the appropriate user fee amounts, and failure to respond to the ALJ’s multiple requests for additional

⁵³ D.98-12-075 at 75-76.

⁵⁴ 376 days x \$500/day.

information. For these reasons, we find that CereTel's history of non-compliance with the rules governing prepaid calling services in California renders it unfit to operate in California, and its application for a CPCN is denied.

Additionally, the Commission finds that CereTel should be fined for its multiple violations in this proceeding. Further, based on one of CereTel's co-owners acting as a representative in other registration applications before the Commission, including representing Angel Americas, we find that CereTel knew or should have known of the necessary approvals for providing prepaid calling services in California. Accordingly, CereTel is directed to pay a fine of \$188,000 for 376 days of operating without authority.⁵⁵

6. Categorization and Need for Hearing

In Resolution ALJ 176-3376, dated April 21, 2016, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Since evidentiary hearings were held, we change the preliminary determination to hearings being necessary.

7. Comments on Proposed Decision

The proposed decision of ALJ Chiv in this matter was mailed to the parties in accordance with § 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

8. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Debbie Chiv is the assigned ALJ in this proceeding.

Findings of Fact

⁵⁵ 376 days x \$500/day.

1. CPED's protest, filed on May 12, 2016, asserts several violations of Commission rules and regulations.
2. CereTel failed to respond to multiple requests for information, issued on July 12, 2018 and August 7, 2018, by the assigned ALJ in this proceeding.
3. CereTel offers prepaid calling cards and prepaid calling service as defined in Bus. & Prof. Code § 17538.9 and Pub. Util. Code Section 885-887.
4. The Commission is authorized to regulate prepaid calling cards and prepaid calling services under Bus. & Prof. Code § 17538.9.
5. CereTel provides a telecommunications service for which registration is required under Pub. Util. Code § 1013.
6. CereTel's application was filed pursuant to Pub. Util. Code § 1013, an expedited and ministerial registration process. CPED's protest removed it from the registration track and set it for consideration as a CPCN under Pub. Util. Code § 1001, per D.10-09-017.
7. CereTel is and was operating without authority contrary to state law and the Commission's rules and regulations.
8. CereTel has been operating in California without Commission authority since March 28, 2015, in violation of Pub. Util. Code §§ 885-887 and Section 1001.
9. CereTel failed to list its Fictitious Business Names in response to Question 1.A. of its application in violation of Rule 1.1.
10. CereTel failed to remit the appropriate Utilities Reimbursement Account Fees in violation of Pub. Util. Code Section 401-435.
11. To determine the appropriate number of days for calculation of a penalty, it is reasonable to use the date from which the applicant offered services in California without authority to the date of the filing of the application.

12. Based on the multitude of violations committed, CereTel is unfit to operate in California as a telecommunication service provider.

Conclusions of Law

1. CereTel's prepaid calling card products and services are subject to the Commission's jurisdiction under Pub. Util. Code § 887.

2. CereTel's application for a CPCN should be denied.

3. CereTel should be penalized for committing multiple violations of state law and the Commission's rules and regulations.

4. The number of days used to calculate the fine should be 376 days based on the date CereTel began offering service in California and the date it filed the present application.

5. CereTel should be subject to a fine of \$188,000 under Pub. Util. Code §§ 2107 and 2108.

6. CereTel should cease and desist providing any unauthorized services in California.

O R D E R

IT IS ORDERED that:

1. The application of CereTel Incorporated for a Certificate of Public Convenience and Necessity to operate as a non-dominant interexchange carrier in California pursuant to Public Utilities Code § 1001 is denied.

2. CereTel Incorporated is penalized for committing multiple violations of state law and the Commission's rules and regulations.

3. CereTel Incorporated is fined based on 376 days of operating without authority in California.

4. CereTel Incorporated must pay a fine of \$188,000 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000,

San Francisco, California 94102, within 30 days of the effective date of this order. Write on the face of the check or money order "For deposit to the General Fund per Decision 19-__-__."

5. CereTel Incorporated shall immediately cease and desist providing any unauthorized services in California.

6. If CereTel Incorporated applies for operating authority in California to provide any form of telecommunications service in the future, it shall include a reference to this Decision in its application.

7. All pending motions not previously ruled upon are hereby denied.

8. Application 16-04-006 is closed.

This order is effective today.

Dated _____, at Oxnard, California.